

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING
AMENDMENT NO. 2 WITH TECOGEN, INC. FOR MAINTENANCE AND REPAIR SERVICES FOR
THE CO-GENERATOR LOCATED AT THE MILPITAS SPORTS CENTER IN ACCORDANCE WITH
MILPITAS MUNICIPAL CODE SECTION I-2-3.09 (SOLE SOURCE PROCUREMENT)**

WHEREAS, Section I-2-3.09 of the Milpitas Municipal Code authorizes the City Council to award contracts for up to five (5) years without competition when the Purchasing Agent determines that there is only one (1) source for the required supply or service; and

WHEREAS, Tecogen, Inc. is the manufacturer and installer of the cogeneration equipment purchased for the Milpitas Sports Center and has been providing maintenance and repair services to the City since 1992; and

WHEREAS, the current agreement with Tecogen, Inc. will expire on June 30, 2014; and

WHEREAS, after conducting a good faith review of the available sources and pursuant to Milpitas Municipal Code Section I-2-3.09, the City's Purchasing Agent has determined that Tecogen, Inc. is still the only source for factory trained and certified technicians and original equipment manufacturer parts.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby approves Amendment No. 2 to the agreement with Tecogen, Inc., for the term from July 1, 2014 to June 30, 2019 with an annual amount not to exceed fifteen thousand five hundred dollars (\$15,500.00) for maintenance and repair services for the co-generator at the Milpitas Sports Center, in accordance with Milpitas Municipal Code Section I-2-3.09 (Sole Source Procurement). A copy of Amendment No. 2 is attached hereto as **Exhibit 1**.

PASSED AND ADOPTED this ____ day of _____ 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney



Tecogen, Inc., a Delaware Corporation
Registered in California
Amendment #2

AMENDMENT NO. 2 TO THE AGREEMENT
WITH
TECOGEN, INC.
FOR
MAINTENANCE AND REPAIRS TO THE CO-GENERATOR

This Amendment is entered into this 18th day of June, 2014, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Tecogen, Inc.**, a Delaware Corporation registered in the State of California (hereafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, the parties entered into an agreement entitled "Short Form Purchase of Service Contract" on January 1, 2009 ("Agreement") to provide maintenance and repair service on the co-generator at the Milpitas Sports Center in the annual amount not-to-exceed of Fifteen Thousand dollars (\$15,000.00) and a total Five (5) year amount not-to-exceed of Seventy-Five Thousand dollars (\$75,000.00); and

WHEREAS, the parties entered into Amendment No. 1 to the Agreement on December 16, 2013 to extend the term of the agreement to June 30, 2014 and increase the contract amount by Seven Thousand Five Hundred dollars (\$7,500.00); and

WHEREAS, the parties now desire to amend the Agreement to extend the term from July 1, 2014 to June 30, 2019 in the annual amount not-to-exceed Fifteen Thousand Five Hundred Dollars (\$15,500.00) in accordance with Municipal Code Section I-2-3.09 (Sole Source Procurement, for a total contract amount not-to-exceed of One Hundred Sixty Thousand Dollars (\$160,000.00)).

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to further amend the Agreement as follows:

1. SECTION 2 of the Agreement entitled "TERM" is amended to read as follows:

"The effective date of this Agreement is January 1, 2009 through June 30, 2019 unless sooner terminated as provided herein".
2. SECTION 3 of the Agreement entitled "PAYMENT LIMIT" is amended to read as follows:

"City's total payment to Contractor under this Agreement shall not exceed Fifteen Thousand Five Hundred dollars (\$15,500.00) on an annual basis from July 1st to June 30th of each fiscal year and shall not exceed One Hundred Sixty Thousand dollars (\$160,000.00) for the entire Term of the Agreement".
3. CONTRACTOR agrees to continue to maintain and pay for all insurance policies as stated in "Exhibit A – Insurance Requirements General" throughout the term of the Agreement and shall provide the City with renewal certificate and endorsements of the insurance policy.

4. All other provisions of the Agreement not amended by this Amendment No. 2 shall remain in full force and effect.

This Amendment is executed as of the date written on Page 1.

APPROVED BY:

CITY OF MILPITAS

TECOGEN, INC.

Thomas C. Williams, City Manager

Name of Authorized Representative

Title of Authorized Representative

APPROVED AS TO FORM:

APPROVED AS TO CONTRACT:

Michael J. Ogaz, City Attorney

Steve Erickson, Project Manager